

1 HONORABLE ROBERT S. LASNIK  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RJB WHOLESALE, INC., a Washington  
corporation,

10 Plaintiff,

11 vs.

12 JEFFREY CASTLEBERRY and JANE DOE  
13 CASTLEBERRY, husband and wife and their  
marital community,

14 Defendants.

NO. 2:16-cv-1829

15 **STIPULATION AND  
PROTECTIVE ORDER**

16 ~~PROPOSED~~

17 **STIPULATION**

18 Plaintiff RJB Wholesale, Inc. ("RJB") and defendant Jeffrey Castleberry  
19 ("Castleberry"), by and through their counsel of record, stipulate and agree as follows:

20     1. **Purpose of Stipulation.** All parties hereto are interested in permitting discovery to  
21 proceed without delay occasioned by possible disputes regarding the confidential nature of  
22 certain information. It is anticipated that the parties will request or file pleadings, documents,  
23 and information that may be confidential or proprietary in nature. This Stipulation and  
24 Protective Order ("Protective Order" or "Order") is intended to protect the confidentiality of

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1 such pleadings, documents and information, while ensuring that the parties can pursue  
2 litigation and discovery, with a minimum amount of burden, expense and delay. Because RJB  
3 and Castleberry's current employer, North American Pipe & Steel Corp. ("NAPSteel"), may,  
4 at times, be competitors, this Order is necessary to ensure that their respective confidential  
5 business information is protected from misuse for anticompetitive purposes. Additionally, the  
6 claims at issue in this litigation involve allegations related to misappropriation of trade secrets.  
7 As such, the parties anticipate that significant amounts of confidential business information  
8 will be exchanged in discovery. Therefore, this Order is warranted to protect such information  
9 from any public disclosure that may harm RJB's, Castleberry's, and/or NAPSteel's business  
10 interests.

11       **2. Protected Material.** In the event a party determines in good faith that a document,  
12 pleading or other information responsive to a request for discovery is confidential or  
13 proprietary and entitled to special protection, that party may invoke this Protective Order and  
14 in good faith designate such documents, pleadings or other information as "Protected  
15 Material" in the manner set forth below. For purposes of this Order, "Protected Material" is  
16 defined as any of the following materials, not publicly available, belonging to RJB,  
17 Castleberry, or NAPSteel:

- 18           (a) Customer lists and customer contact information;
- 19           (b) Customer contracts, invoices, purchase orders, and sales;
- 20           (c) Bids, quotes, and estimates;
- 21           (d) Product specifications, designs, schematics, and plans;
- 22           (e) Sales pitch documents and presentations;
- 23           (f) Supplier lists and supplier contact information;

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- 1                         (g) Product pricing information;
- 2                         (h) Data related to revenues, profits, and profit margins;
- 3                         (i) Budgets, ledgers, and accounting and financial statements;
- 4                         (j) Marketing, business, research and development plans; and
- 5                         (k) Personnel records and employee compensation information.

6             “Protected Material” may be contained in interrogatory answers, responses to requests for  
7             production and requests for admissions, deposition transcripts and exhibits, pleadings,  
8             affidavits, declarations and other pleadings, documents and/or other information designated as  
9             “Protected Material” by a party. Any summaries, copies, notes, abstracts, or other documents  
10           or things containing or derived in whole or in part from information designated as Protected  
11           Material shall also be deemed so designated. All such materials shall be protected, used,  
12           handled and disposed of in accordance with the provisions of this Order or any amendments  
thereto.

13           **3. Limitation on Designation of Protected Material.** The parties shall not designate  
14           information as Protected Material unless they believe reasonably and in good faith that the  
15           information should in fact be so designated. If the Court later determines that the parties did  
16           not act reasonably or in good faith in making such a designation, the Court shall award to the  
17           party opposing the designation that party’s reasonable attorneys’ fees in disputing the  
18           designation; provided, however, that no party may challenge such a designation unless and  
19           until that party has first made a reasonable, good faith attempt to resolve the matter informally  
20           with the designating party. A party’s decision not to dispute a producing party’s designation  
21           of materials as “Protected Material” shall not be deemed an admission that the material is, in  
22           fact, confidential, proprietary, non-public, a trade secret, or the like.

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1       **4. Method of Document Designation.** Documents containing Protected Material may  
2 be so designated by stamping copies of the document produced to a party with the legend  
3 "CONFIDENTIAL" on each page thereof. Documents designated as "CONFIDENTIAL"  
4 are hereinafter referred to as "Confidential Documents." A party or non-party may designate  
5 as "HIGHLY CONFIDENTIAL" any document or that portion of any document that is or  
6 contains confidential financial, marketing, product planning, pricing, technical or commercial  
7 information, or that identifies customers or prospective customers, which the party believes in  
8 good faith to be of the highest sensitivity and which, if disclosed to persons other than those  
9 listed in Section 7 below, is likely to cause competitive harm which cannot be prevented  
10 through less restrictive means. The purpose of this designation is to protect confidential  
11 materials that are so sensitive that they cannot reasonably be disclosed to another party as in  
12 the case of materials that are designated as "CONFIDENTIAL." The designation of  
13 "HIGHLY CONFIDENTIAL" should be used only when reasonably necessary. Examples of  
14 materials that might appropriately be designated "HIGHLY CONFIDENTIAL" include,  
15 without limitation, competitive pricing information, lead sources, identification of lead  
16 sources, project estimates, and profit and loss statements that cannot reasonably be designated  
17 as "CONFIDENTIAL." Documents designated as "HIGHLY CONFIDENTIAL" are  
hereinafter referred to as "Highly Confidential Documents."

18       **5. Use of Protected Material.** All Protected Material (including Confidential  
19 Documents and Highly Confidential Documents) produced under this Protective Order is to be  
20 used solely for purposes of this action, including all claims, counterclaims, third-party claims,  
21 and affirmative defenses asserted herein (this "Action"). This Protective Order shall be  
22 applicable to pretrial discovery, motions, pretrial preparation, settlement, and other

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1 proceedings in this Action. The persons having access to Protected Material shall not disclose  
2 or provide Protected Material to any person not authorized under this Protective Order. No  
3 Protected Material may be made available to, or in any manner revealed to, or discussed with  
4 any other entity, except: (1) solely in accordance with the procedures set forth in this  
5 Protective Order, or (2) upon the express written permission of counsel for the Producing  
6 Party.

7       **6. Access to “Confidential Documents.”** Except under the conditions set forth in  
8 paragraph 7 of this Protective Order, such CONFIDENTIAL documents may be disclosed to  
9 the following “Qualified Persons”:

10           (a) Counsel of record for the parties, including members of such attorneys’ staff (e.g.,  
11 paralegals, secretaries, and administrative personnel) employed by counsel for litigation  
12 purposes;

13           (b) Officers of the Court and supporting personnel or officers of any appellate court to  
14 which an appeal may be taken or in which review is sought, including necessary stenographic  
15 and clerical personnel (e.g., court reporters).

16           (c) Parties and Party representatives (including officers, directors and employees); and  
17           (d) Independent experts and consultants retained by a party or their counsel for the  
18 purpose of assisting in this litigation; and

19           (e) Any other person designated by the Court in the interests of justice upon such  
20 terms as the Court deems proper.

21       **7. Access to Highly Confidential Documents.** Except under the conditions set forth  
22 in paragraph 6 of this Stipulation and Protective Order, such HIGHLY CONFIDENTIAL  
23 documents may be disclosed to the following “Qualified Persons”:

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1                         (a) Counsel of record for the parties, including members of such attorneys'  
2 staff (e.g., paralegals, secretaries, and administrative personnel) employed by counsel for  
3 proper litigation purposes;

4                         (b) Officers of the Court and supporting personnel or officers of any appellate court to  
5 which an appeal may be taken or in which review is sought, including necessary stenographic  
6 and clerical personnel (e.g., court reporters);

7                         (c) With the prior written permission of the producing party, officers, agents, or  
8 employees of the receiving party on a document-by-document basis; provided, however, that  
9 any such agent, officer, or employee shall execute a Non-Disclosure Certification as set forth  
in paragraph 10.

10                         (d) Any other person designated by the Court in the interests of justice upon such terms  
11 as the Court deems proper.

12                         **8. Depositions.** Counsel for the receiving party may use Protected Material at a  
13 deposition. A party may designate information disclosed during a deposition as "Protected  
14 Material" by so indicating on the record at the deposition the specific beginning and end point  
15 of testimony regarding "Protected Materials", or by designating in writing, within twenty (20)  
16 days of receipt of the deposition transcript, the specific pages and lines of the transcript and/or  
17 the exhibits to be accorded protected treatment. With respect to the use during a deposition of  
18 previously designated "Protected Material," counsel for the party introducing the previously  
19 protected materials shall make reference to the confidentiality of the "Protected Material" on  
20 the record. All persons not authorized under this Order to receive the "Protected Material"  
21 shall be excluded from that portion of the deposition during which the "Protected Material" is  
22 used, unless otherwise agreed by the Parties or ordered by the Court.

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Designations not made on the record during the deposition must be made in writing and served on all parties within twenty (20) days of receipt of the transcript containing the designated material. There shall be no waiver of protection under this Protective Order if timely designation is made. Any Party may object to any designation not made on the record during the deposition within twenty (20) days of the receipt of the written designation.

Prior to disclosure of Protected Material at a deposition, to any deponent other than the author of the document, or a director, officer, employee or agent of the party that produced the Protected Material, the questioning party shall ask the deponent, on the record, to agree to use the Protected Material only for the purposes of this litigation, and to refrain from disclosing the "Protected Material" to anyone other than his or her attorney, the named Parties and the law firms involved in this action.

If the deponent refuses to assent, disclosure of the documents during deposition shall not constitute a waiver of the protections afforded by this Order. Under such circumstances, the witness shall sign the original deposition transcript in the presence of a court reporter or other appropriate designee and no copy of the portions of the transcript or exhibits designated as Protected Material shall be given to the deponent.

The court reporter shall separately transcribe or segregate those portions of the testimony designated as containing "Protected Material" at the deposition. The reporter shall mark the face of the protected portion of the transcript with a Legend accordingly. Any party seeking to file portions of the deposition transcript or exhibits under seal shall be responsible for complying with Local Civil Rule 5(g).

9. **No Loss of Confidential Status.** Protected Material shall be kept in strict confidence and disclosed only to persons and in the manner authorized in this Order and the

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1       contents may not be disclosed orally contrary to the provisions of this Protective Order.  
2       Notwithstanding the foregoing, counsel for the parties may discuss the existence and contents  
3       of Protected Material with their clients insofar as is necessary for counsel's representation of  
4       the parties in this litigation. In the event that any Protected Material is sought to be used in  
5       any court proceeding in this action, the party seeking to protect confidentiality shall be  
6       responsible for complying with Local Civil Rule 5(g). The Protected Material shall not lose its  
7       confidential status through such use, and the party using such shall take all reasonable steps to  
8       maintain its confidentiality during such use.

9              **10. Certifications.** Before counsel for a party may disclose Protected Material to any  
10       other Qualified Person identified in paragraphs 6 and/or 7 (except counsel for the parties, the  
11       parties, and party representatives, or the Court and court reporters), the disclosing counsel shall  
12       obtain from the Qualified Person an executed copy of the Non-Disclosure Certification  
13       attached hereto as Exhibit A. Execution of this Non-Disclosure Certification confirms the  
14       signatory's willingness to be bound by the provisions of this Protective Order and a waiver of  
15       any objection, jurisdictional or otherwise, to the exercise by the Court of its power to enforce  
16       the terms of this Order by such means as the court believes appropriate. Counsel who  
17       discloses Protected Material to a Qualified Person shall provide a copy of the Certification to  
18       all other counsel, and shall retain the Qualified Person's original executed Non-Disclosure  
19       Certification until the conclusion of this Action as set out in paragraph 13.

20              **11. Reservation of Rights.** This Protective Order is entered without prejudice to the  
21       right of the undersigned parties to apply to the Court at any time for additional protection or to  
22       release, rescind or modify the restrictions of this Order or to determine whether a particular  
23       person shall be entitled to disclosure of the Protected Material, or whether particular

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1 documents should be treated as Confidential. By entering into this Order, no party waives or  
2 limits any objection to the use of all or a portion of documents containing Protected Material at  
3 the trial of this Action or in any other proceedings in which said documents are offered as  
4 evidence or for any other purpose.

5       **12. Use of Protected Material in Court.** Nothing in this Protective Order shall  
6 prevent the use of any documents or information at time of trial or in connection with pretrial  
7 motions. Nothing in this Order shall be considered a waiver of any objection or response to  
8 objection regarding admissibility or use of covered material. In the event that any Protected  
9 Material is included with, or the contents thereof are in any way disclosed in, any pleading,  
10 motion, deposition transcript, or other paper filed in any court proceeding in this action, it shall  
11 not lose its confidential status through such use, and the party using such Protected Material  
12 shall take all reasonable steps to maintain its confidentiality during such use. The fact that the  
13 Protected Material exists may be referred to in briefs and other documents filed with the court.  
14 The sealing of the Protected Material shall be subject to the Federal Rules of Civil Procedure  
15 and Local Civil Rule 5(g) of this Court. Any party may request that Protected Material be  
16 sealed in accordance with those Rules.

17       **13. Conclusion of Action.** The conclusion of this action shall not terminate the  
18 obligations of this Protective Order. Upon termination of this Action, all Protected Materials  
19 and Certifications in the possession of the Parties shall be returned to the producing party or  
20 destroyed within thirty (30) days, at the discretion of the parties. This Order shall not affect  
the records or files of the Court.

21       **14. Inadvertent Production.** During the course of this action, the parties may  
22 inadvertently produce unmarked documents that are Protected Material. Each party reserves

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1 the right subsequently to assert that any document so produced is Protected Material. If a  
2 party inadvertently produces or discloses any Protected Material without marking it with the  
3 appropriate legend, it shall (a) give notice to the receiving party within ten (10) days after  
4 discovering such inadvertent production that the information should be treated in accordance  
5 with the terms of this Protective Order, and (b) promptly after giving such notice, forward  
6 appropriately-stamped copies of the items in question. Within five (5) days of the receipt of  
7 the substitute copies, the receiving party shall return the previously unmarked items and all  
8 copies thereof. The inadvertent disclosure shall not be deemed a waiver of protection under  
9 this Order if timely designation is made. Upon notification by the producer of such  
10 documents, all parties will thereafter treat the documents identified as Protected Material.

11       **16. Production of Protected Material to Non-Parties.** In the event that any Party to  
12 this Protective Order receives a subpoena or other demand to produce Protected Material from  
13 a person or entity who is not a party to this Order, then the receiving Party shall give prompt  
14 written notice of the subpoenas or demand to the Party who designated the Protected Material.  
15 The Party receiving such demand for production of the Protected Materials shall give prompt  
16 written notice of the existence of this Protective Order to whoever made the demand for the  
17 Protected Material. The Party who designated the Protected Material shall be solely  
18 responsible for taking timely action to respond to the demand for production if the party  
19 wishes to preserve the confidentiality of the Protected Material. If no timely action is taken by  
20 the designating party, the Protected Materials may be produced. Nothing herein shall be  
21 construed as requiring the Party receiving the demand to produce to challenge any request for  
22 production of Protected Material, to be subject to any penalties for noncompliance with any  
23 legal process, order or demand, or to seek any relief from this Court.

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